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The Solicitors' Journal

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Current Topics.

Fancy Conditions in a Will.

A TESTATOR is reported to have left one-third of his property subject to his wife's life interest, and to an accumulation period of twenty years, to be divided between his grandsons, who (1) have never been vaccinated or inoculated; (2) have not partaken of intoxicating liquor as a beverage; and (3) have not contracted "the pernicious and injurious habit" of smoking tobacco. Conditions (2) and (3) are, of course, in no way unlawful as offending against public policy; indeed, it is arguable that the teetotaller and non-smoker, a person of disciplined and austere life (unless, of course, he disastrously substitutes cocaine or morphia for these anodynes) is the better citizen for his abstinence. In *Tattersall* v. *Howell* (1816), 2 Mer. 26, the legatee was directed to give up low company as a condition of receiving benefit, and this was held valid, but an inquiry had to be ordered on the issue. In *Maud* v. *Maud* (1860), 27 Beav. 615, a case very shortly reported, a legatee required to "follow the path of virtue" recovered her legacy, no specific imputation being made against her. The executors' difficulty in ascertaining that a particular person had not in a long course of years drunk a glass of beer, even by accident, is obvious. The first condition, however, as to vaccination or inoculation admits of more argument as to validity. The policy of the Vaccination Acts is still in force, and although the conscientious objector can now dispense with the vaccination of his children under the Act of 1907, the official view is that it is still requisite as a protection against smallpox. Thus any condition which deterred either a parent who had not a conscientious objection or an adult from vaccination might perhaps be held injurious as tending to disseminate the disease and therefore void. There is no similar law requiring inoculations against other maladies, but in the war soldiers were required to be inoculated against typhoid, etc., and some inoculations, e.g., against the diphtheria germ, are given to persons actually suffering from a particular disease. There is hardly reason to doubt that such inoculations have saved, and continue to save life, and it is certainly arguable that it is against public policy to forbid a proved method of curing disease, to which doctors constantly resort.

"Twenty-three years of age or under."

THE PROVISO to s. 2 of the Criminal Law Amendment Act, 1922, was the subject of a difference of opinion amongst the judges of the King's Bench Division, and the matter has therefore been referred to a Divisional Court of five judges. It will be remembered that the above section amended ss. 5 and 6 of the Criminal Law Amendment Act, 1885, dealing respectively with unlawful carnal knowledge of girls of a certain age and mental deficients, and the allowing or suffering by a householder of resort to his premises by such girls for the purpose. As originally framed, the defence was available to either charge that the prisoner had reasonable cause to believe a young girl was over the age of sixteen years. This defence was abolished by s. 2 of the Act of 1922, with the proviso that it should be available to a man of twenty-three years of age or under. A man of the age of twenty-three years and six months was charged with an offence under s. 5 of the Act of 1885, and the plea of his reasonable belief that the girl assaulted was over the age of sixteen years was entered on his behalf. On the original appeal from AVORY, J., and the Court of Criminal Appeal, FINLAY and HAWKE, JJ., were of opinion that a man who had not attained the age of twenty-four years was of twenty-three years of age or under, but Lord HEWART, L.C.J., took the contrary view, holding that a man of twenty-three years and six months was over twenty-three. The Court, consisting of five judges, namely, HEWART, L.C.J., and ROCHE, ACTON, HAWKE, and HUMPHREYS, JJ., has now taken the former view, on the main ground that the subject is to have the benefit of the doubt if Parliament has left a criminal statute ambiguous. Those responsible for framing this provision in the statute certainly cannot be congratulated either on the clarity of their language or their regard for case law, which gives definite guidance when appropriate words are used. The old cases as to an infant coming of age the day before the birthday were considered in *Re Shurey* [1918] 1 Ch. 263, in which SARGANT, J., ruled that one who was born on 22nd July, 1891, had attained the age of twenty-five years when he died on 21st July, 1916. If the proviso had been that the defence was open to any man who had not attained the age of twenty-four (or twenty-three) years of age, there would have been no difficulty. Having regard to ordinary usage, perhaps the view now taken may be preferred, for any man or woman after a twenty-third birthday or before a twenty-fourth, on being asked his or her age, would reply "twenty-three." "Birthday" of course means birthday anniversary. It may be observed that the old cases are somewhat anomalous, and, if opportunity offered, it would be better to enact that a person attains a particular age on and not before the corresponding birthday anniversary.

Special Reasons for not Disqualifying Motor Drivers.

A PERSON WHO is convicted of driving or attempting to drive a motor vehicle while under the influence of drink or drugs so as to be incapable of having proper control of the vehicle must be disqualified for holding a driving licence for

at least twelve months "unless the court for special reasons think fit to order otherwise" (s. 15, Road Traffic Act, 1930). In a case before a bench of justices last week a van driver who was fined under this section and also for dangerous driving was told he would be disqualified for twelve months. The defendant said disqualification meant beggary to him; and after the bench had consulted, the chairman announced that they considered there were special reasons why there should be no disqualification. We are not going to quarrel with such a merciful decision. We desire simply to use it as an illustration of a difficulty under the statute. The magistrates may have had many good reasons, properly described as "special," for reconsidering the question of disqualification. It may be doubted, however, whether upon a strict interpretation of the expression "special reasons" the fact that a driver would lose his employment and possibly be reduced to poverty is a sufficient ground, alone, for refraining from disqualifying. It is a common or general reason, rather than a special one. It may be argued that special reasons must have reference to a particular case rather than to a whole class of cases. As a matter of policy, also, it might be urged that the special reasons should have reference rather to the conditions under which the offence was committed and the unlikelihood of a repetition of it than to the effect of a disqualification upon the defendant; in other words, that the safety of the public rather than the circumstances of the defendant should be the main consideration. That, however, as we have said, is a matter of policy, and we should be slow to dogmatise about it or to criticise decisions that lean towards mercy. Magistrates who have to guard the safety of the public and also to avoid being unduly hard on offenders find this section a very difficult problem in the administration of justice.

The Etiquette of the Hat.

"When a fair-haired girl entered the witness-box at East Ham Police Court to-day," said *The Evening Standard* of the 14th July, "without a hat, the magistrate said: 'There are two places where ladies must put on their hats. Those places are a court of justice and a church. If you have not a hat I will excuse you, but please remember never to come into a court of justice again without one.' The girl blushed, took the oath, and gave her evidence, still without a hat." We should be interested to learn where the magistrate gets authority for the imperative "must," for we know of no law requiring headgear on ladies in courts of justice, and if there be a custom or a rule of etiquette, how is it to be enforced? Suppose a woman comes into court without a covering to her head, and she is either defendant, complainant or witness. Can she be remanded without bail till she procures a hat? Does she become an incompetent witness? Is she to be denied justice? We venture to suggest that the King's Courts are open to women, with or without hats, and that it is idle to call attention to the supposed breach of etiquette. The linking in the magistrate's remarks of church and court makes one wonder whether the danger to the angels hinted in an obscure passage of Holy Writ is supposed to extend to the mythological figure of justice. Is it suggested that the scales might get entangled in the girl's hair? Or are unsnooded locks too captivating for the police? In fact too much insistence on the etiquette of the hat is likely to lead to ridiculous incidents, as where a somewhat pompous magistrate demanded in a loud voice why "that man" did not remove his hat, only to find it was an elderly woman with a man's cap skewered to her topknot in the manner not uncommon in the East end. On another occasion a bench lectured a soldier for keeping on his cap in the witness-box, explaining, at painful length, that though that was proper before a court martial it was out of order in a civil court; when the soldier could get a word in he made the simple reply that he was a Jew, who had donned his cap to take the oath in the orthodox Hebrew fashion.

Agricultural Workers' Wages:
A Question of Estoppel.

Minimum wages for the workers in a number of trades are fixed under the provisions of the Trade Boards Acts, 1909 and 1918, whilst those for agricultural workers are determined under the Agricultural Wages (Regulations) Act, 1924, and Orders made thereunder. Under the latter Act the rates are fixed by the local agricultural wages committee and put in force by an order of the (Central) Agricultural Wages Board.

The provisions in the Agricultural Wages (Regulations) Act with regard to the liability of an employer to pay the minimum wage, and as to the consequences of non-payment, follow largely those in the Trade Boards Act. Section 7 is the relevant section of the former Act. By the earlier part of sub-s. (1) it is provided that any person who employs a worker in agriculture shall, in cases in which a minimum rate is applicable, pay wages to the worker at not less than the minimum rate; sub-s. (9) provides that the powers given by the section for the recovery of sums due from an employer to a worker (which powers we refer to later) shall not be in derogation of any right of the worker to recover such sums by civil proceedings; and sub-s. (10) makes void any agreement for payment of wages in contravention of the Act, or for abstaining from exercising any right of enforcing payment of wages in accordance with the Act.

Pausing here, we see that the effect of the sub-sections quoted is to create a statutory debt to the worker to the amount of the minimum wage (unless, in case of a worker affected by some infirmity, the employer has obtained an exempting permit under another section 2 (3)) and that such statutory debt is recoverable by common law action. Apparently such right of action is only barred by the six-year limit imposed by the Limitation Act, 1623, since it has been held that s. 3 of the Civil Procedure Act, 1833, prescribing a limit of two years for actions for penalties, damages, or sums of money given to the party grieved by any statute, only applies to sums in the nature of penalties and not to debts (*Jarvis* v *Surrey County Council* [1925] 1 K.B. 554).

To return now to the earlier provisions of the section. Sub-s. (1) further provides that any employer failing to pay the minimum wage shall be liable on summary conviction to a fine as therein mentioned. Sub-section (3) directs that the court, on any proceedings being taken, whether there is a conviction or not, *shall* order the employer to pay—in addition to the fine, if any—the difference (as found by the court) between the amount which ought, at the minimum rate applicable, to have been paid to the worker during the six months immediately preceding the laying of the information, or the serving of the complaint, and the amount actually paid during that period. Sub-section (3) provides that, if the employer is convicted and if notice of intention to do so has been served with the summons, evidence may be given of failure by the employer to pay wages at the minimum rate for a further period of eighteen months preceding the six months mentioned in sub-s. (3), i.e., two years in all, and on proof of such failure the court *may* order payment of the amount underpaid by the employer during such further period of eighteen months.

The limitation of the right of a court of summary jurisdiction to make an order in respect of amounts underpaid, to a maximum period of two years, almost suggests that the framers of this provision were under the impression that s. 3 of the Civil Procedure Act, 1833, above referred to, applied to statutory debts generally, which, as we have pointed out, does not appear to be the case.

Sub-section (7) authorises an officer appointed by the Minister of Agriculture and Fisheries, acting under special or general directions, to institute on behalf of, or in the name of, an agricultural worker civil proceedings before any court of competent jurisdiction for the recovery of any sum which

may appear to the officer to be due to the worker on account of the payment of wages at less than the minimum rate applicable.

The chief difference between the provisions above referred to and the analogous ones of the Trade Boards Acts is that the latter contain no provision for an order in any event to be made in respect of the period of six months prior to the laying of the information, but give power in the event of a conviction to make an order extending to two years prior to such date: s. 9 of the Trade Boards Act, 1918.

We now come to our sub-heading, the question of estoppel. Suppose an employer has been convicted by a court of summary jurisdiction and (the requisite notice having been served with the summons) evidence is given of failure to pay the minimum wage for a period exceeding six months before the laying of the information, but the court makes an order (which it is bound to make) for the payment of the deficiency for six months only, i.e., it does not exercise the power of ordering the deficiency to be made up for a further period, up to two years in all. Is the worker estopped from recovering the amount of the under-payment in civil proceedings?

Through the courtesy of the Official Solicitor to the Ministry of Agriculture and Fisheries, we have been favoured with a sight of an official copy of a considered judgment by His Honour Judge CHAPMAN, delivered in the York County Court in May last, in an action, *Ellington* v. *Swallow*, in which this defence was raised.

The facts as appearing from the judgment were shortly as follows: In January last a summons was issued on an information laid by an official of the Ministry charging the defendant with a summary offence under s. 7 (1) in respect of non-payment of the minimum wage to the plaintiff, and due notice was given to the defendant under sub-s. (4) of intention to give in evidence failure to pay at less than the minimum rate for eighteen months preceding the six months prior to the date on which the information was laid, and such evidence, we understand, was actually given when the summons was heard by the justices, although this point is not quite clear from the judgment. The justices convicted the defendant, imposing a small fine and ordered payment of a sum representing the arrears of wages for six months prior to the laying of the information. There was no order in respect of any further period, and apparently no explanation of the reason why the justices did not exercise their power of making such an order.

The officer of the Ministry then issued a summons in the county court in the name of the worker as plaintiff for the recovery of the further arrears from 23rd September, 1929, i.e., from a date well within the additional period of eighteen months in respect of which the justices had power to make an order under sub-s. (4). The defence was *res judicata*, and the defendant's advocate contended that as he was in peril before the justices of having an order made against him for the same amount as was then sued for, the plaintiff was estopped from recovering in civil proceedings.

The learned judge had the advantage of having had brought to his notice a full report made by the Treasury reporter of the judgment of SWIFT, J. (with which ACTON, J. agreed), in a case of *Walters* v. *Garland*, on appeal from a county court to the divisional court on the 17th October, 1928. The latter case dealt with a practically analogous condition of affairs in respect of non-payment of a minimum wage fixed under the Trade Boards Acts. In that case the county court judge held there was an estoppel and dismissed the action. SWIFT, J., after expressing the view that there could be no case of *res judicata* because the two proceedings were not between the same parties (in the proceedings before the justices the officer of the Ministry was the informant and in the action the worker was the plaintiff), but declining to decide the case on that ground, as the point had not been taken in the county court, proceeded to consider whether there was evidence before the county court judge upon which he could come to the conclusion that the question had already been decided by a court of competent jurisdiction. He (SWIFT, J.) came to the conclusion that there was no such evidence; the onus was on the defendant to show that the justices meant and intended their decision to be a final determination between the parties, and that onus had not been discharged, and on that ground the appeal was allowed and judgment entered for the worker.

Applying this decision of the divisional court of the fact in the case before him, His Honour Judge CHAPMAN had no difficulty in finding as a fact that, whilst the decision of the justices was a final determination in respect of the amount due to the plaintiff for the six months prior to the laying of the information, there was no evidence before him that their award was a final determination of the whole of the plaintiff's claim for under-paid wages. Accordingly he held that the plea of *res judicata* failed and he gave judgment for the amount claimed with costs. His honour, following also the divisional court, expressly refrained from deciding whether the informant in the court of summary jurisdiction (the officer of the Ministry) could properly be regarded as the same party as the plaintiff in the county court action.

As to the latter point, it will be noticed that the action in the county court was instituted by the same officer who was informant in the court of summary jurisdiction, but was in the name of the worker as plaintiff, and the only difference between such latter action and one commenced by the worker personally appears to be that in case of non-success the officer, under another special provision of the Act, is liable for costs.

What would be the position if in proceedings before a court of summary jurisdiction the justices, whilst convicting the employer, actually refused to make an order in respect of alleged insufficient payment beyond a period of six months before the laying of the information, on the ground that the evidence tendered was insufficient or conflicting, is a question which may yet have to be settled.

The Land Value Tax.

By W. E. WILKINSON, LL.D. (Lond.).

II.—THE VALUATION.

BEFORE the land value tax can be imposed on any land, it is necessary for the land to be valued. Land which is exempt from the tax will not be valued (s. 11 (6)), and as the exemptions are numerous (see s. 24), it follows that much of the land in the country will not be valued.

The scheme of the land value tax provisions is that all land subject to the tax shall be valued every five years. It was originally proposed that land should be valued for the first valuation as at the 1st August, 1931, but, in order presumably to allow more time for the necessary arrangements to be made, this date has been altered. Land is to be valued for the first valuation as at the 1st January next, for the second valuation as at the 1st August, 1936, and subsequently as at the fifth anniversary of the last preceding valuation (s. 32).

Land Unit.

For the purposes of valuation, land is to be divided into land units. Except in three cases presently to be mentioned, every piece of land in separate occupation at the valuation date will be a land unit (s. 11 (3)). The three cases are as follows:—

(1) Where two or more parts of a piece of land which is in separate occupation are at the valuation date owned by different persons, every such part will be a land unit. Any such parts will be deemed to be in different ownership although owned by the same person if vested in him for different estates or in different capacities (s. 11 (3)).

(2) Where a building is divided horizontally and the several divisions are at the valuation date in different separate occupations or in different ownership (as in the case of flats), none of the divisions will be deemed to be a land unit. In such a case the site of the building (with its curtilage) will be a land unit (s. 11 (3)), but the tax will be apportioned among the owners of the respective divisions of the building (s. 17 (1)).

(3) Where two or more pieces of land in different separate occupations are owned by the same owner, the Commissioners of Inland Revenue may treat those pieces of land as one land unit, if they are of opinion that a prudent vendor would sell the pieces as one lot. The owner may, however, object to this (see s. 14 (2)).

Land Value.

The Act (s. 11) lays down in detail the principles upon which the land value of a land unit is to be ascertained. The value of a land unit will be entirely hypothetical. Speaking generally, the land value of a land unit will be represented by the price which a purchaser would pay for the land in the open market at the valuation date if (1) the existing buildings and works (with certain exceptions) thereon were not there, and (2) all other pieces of land were in their existing condition with all buildings and improvements thereon (s. 11 (1), (4)). It is the site value which is to be ascertained, but it is to be ascertained in accordance with the provisions of s. 11.

The value thus ascertained will be the land value, and it was on this value that it was originally intended that the tax should be charged. During the passage of the Bill through the House of Commons, however, a new clause (now s. 18) was added. The effect of s. 18 is that, in order to ascertain the value on which tax is to be charged, the land value thus ascertained is to be reduced by either (*a*) four times the assessment of the land unit under Sched. A, or (*b*) by seven eighths of the land value, whichever is the *less*. Tax will then be charged on the net value thus ascertained.

In the case of most ordinary houses, the reduced value thus ascertained will not exceed £120. And as the owner of a land unit is entitled to relief from tax where the total amount of tax payable does not exceed 10s. (s. 24 (3)), the result will be that in such cases no tax will be payable.

Agricultural Land.

In the case of agricultural land (including market gardens, nursery gardens, allotments and allotment gardens) two values are to be ascertained: (1) the land value as at the valuation date, and (2) the cultivation value as at that date (s. 11 (2)). "Cultivation value" is defined in s. 11 (2).

No tax will be chargeable in respect of agricultural land so long as the land has no higher value than its value for agricultural purposes (s. 24 (5)). Where the land value exceeds the cultivation value, the cultivation value is to be deducted from the land value, and tax will then be chargeable either (*a*) on the difference between the two values, or (*b*) on the reduced amount otherwise obtained in accordance with the provisions of s. 18 (2) of the Act. The result will be that in many cases no tax will be payable on agricultural land, because the value thus obtained will be so small that any tax would not exceed 10s., so that the owner could claim relief under s. 24 (3).

Notice of Valuation.

The owner of every land unit which is valued under the Act will be entitled to notice of the first valuation (s. 12 (3)). As the owner for the purposes of the charge of tax will not be the freeholder or other reversioner where the land is subject to a lease for more than fifty years, such freeholder or other reversioner will not be entitled to notice unless he informs the Commissioners that he wishes to receive it (s. 20 (5)).

The Land Values Register.

The Commissioners of Inland Revenue will keep a record and make therein, in relation to every land unit which has been valued, entries showing—

(*a*) The description of the unit;

(*b*) The amount of the land value thereof;

(*c*) The amount of the cultivation value of any agricultural land comprised therein (s. 12 (1)).

A land values register (being a copy of so much of the entries in such record as relates to land wholly or partly comprised in the area of the council) will be deposited at the office of the Common Council of the City of London and of the council of every metropolitan borough, county borough, and county district (s. 12 (1)).

The owner of any land in respect of which entries are inserted in a land values register may inspect the register and take extracts therefrom free of charge (s. 15 (3)).

Division of Land Units and Apportionment of Values.

If on the 1st January in any year of charge, a land unit is divided, and the separate parts are vested in different owners, revised entries are to be substituted for the entries in respect of the former land unit, showing every such part as a separate land unit and showing the land value and the cultivation value (if any) shown by the entries in respect of the former unit apportioned as at the 1st January as between the several parts thereof according to their respective values. Every such part will then be deemed to be a land unit (s. 13 (1)).

(*To be continued.*)

CORRIGENDA.

In last week's article on this subject, reference to s. 19 of the Finance Act, 1931, should have been to s. 18, a King's Printer's copy of the Act subsequently obtained showing that the sections referred to have been interchanged.

Company Law and Practice.

XC.

(*Continued from p.* 537.)

ISSUE OF SHARE CERTIFICATES.

SECTION 92 of the Act of 1908 provided that every company should, within two months after the allotment of any of its shares, debentures or debenture stock, and within two months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide. The section also imposed a penalty for default. This section reappears as s. 67 of the Act of 1929, with certain additions which may make it more valuable; thus, it will be observed that though the old s. 92 imposed a penalty on defaulting companies and their officers, it did not give to the person chiefly injured by such default any remedy, other than the doubtful, and, to a well regulated mind, unsatisfactory, remedy of a fine on the defaulter. Further, it will be remembered that, in the past, the imposition of a penalty under the Acts was somewhat of a rarity; the position is perhaps somewhat improved to-day, but it is still true to say that there is much room yet for demonstrating that the provisions of the Companies Act are meant to be observed, and not either deliberately ignored or carelessly overlooked. After all, every provision in the Act is presumably meant to serve some purpose, and every person who takes advantage of the benefits conferred by limited liability ought to be made subject to the burdens, such as they are, which are frequently imposed for the protection of third

parties. Also, so far as transfers were concerned, the person injured had, under the old section, no remedy unless his transfer had actually been registered.

The new section has had added to it a definition of "transfer," which means, in that section, a transfer duly stamped and otherwise valid, and does not include a transfer which the company is for any reason entitled to refuse to register, and does not register. The introduction of this definition is made necessary by the fact that, in place of the registration of the transfer being the material date, as it was in the old section, the lodgment of the transfer with the company is now the point of time to be considered. With regard to this definition, it may be noticed that the directors ought not to register a transfer which is not duly stamped. Under s. 17 of the Stamp Act, 1891, the secretary or the registrars, or other person whose office it is to register the transfer, would be liable to a fine of £10 for making such registration, while, so far as the company is concerned, the transfer could not be put in in evidence unless it were duly stamped and a penalty paid thereon. There may be many cases in which a company may be entitled to refuse to register transfers, as, for instance, owing to some restriction in the articles, which would usually be in the case of a private company.

Section 67 (3) now gives the aggrieved person a right to go to the court for an order directing the making good of any default under s. 67 (1). A condition precedent to this application is that there must be served on the company a notice requiring it to make good the default, and that the company has not made good the default within ten days after the service of the notice. The mode of the application to the court is governed by Ord. 53B; under Ord. 53B, r. 8 (*i*), the application must be by summons; if it be an originating summons no appearance need be entered (Ord. 53B, r. 9). Ord. 53B, r. 4, gives directions as to the title to the summons: it must be intituled in the High Court of Justice, Chancery Division, and in the matter of the company, and in the matter of the Companies Act, 1929. The section also expressly provides that any order made thereunder directing the making good of a default may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

The default which may be made under s. 67 (1) is a default in completing and having ready for delivery the necessary certificate or certificates or debentures, and the power given to the court by the section is a power to direct the making good of the default, so that there is at any rate no express power for the court to make an order for the delivery of the certificates by virtue of the section. It may be that such a power is not likely to be necessary, but there might be a case where it would prove desirable, and it seems that, having obtained his order under this section, and not being able to obtain actual possession of the certificates, the disgruntled shareholder would have to seek further relief in some other way. This raises also a question with regard to the evidence on any such application: Is it to be sufficient evidence of default under s. 67 (1) for the applicant to say that he has not obtained delivery of his certificate? He can hardly be in a position to say positively that the company has not completed and has not ready for delivery the appropriate certificates, unless he can obtain internal evidence. It would seem that his proper course is to say that he has not received the certificate, after application has been made for it, although the statutory notice has been served under s. 67 (3), and then to leave the court to presume the default, unless, of course, he is able to extract from the company an admission of default.

From the point of view of a company it will readily be appreciated that, unless the having ready for delivery is to be treated as something not necessarily connoting the obligation to deliver, it will frequently be advisable to make conditions of issue which do make provision for taking the issue out of the terms of s. 67. Thus, it may be that the company does not wish to issue share certificates with regard to a particular issue until the shares are fully paid, and that the last instalment is not due until more than two months after allotment: in such a case the conditions of issue must be framed so as to meet s. 67.

(*To be continued.*)

A Conveyancer's Diary

Personal Representatives' Right of Retainer—Priority of Crown Debt.

The right of a personal representative to retain his debt when the estate is insolvent, and the question whether the Crown still has priority as against such right of retainer, was before the court in *Re Cockell: Jackson* v. *Attorney-General* [1931] 1 Ch. 389. The decision is of some importance, and that the proper construction of the pertinent statutory provisions is not without difficulty is emphasised by the fact that in the Court of Appeal Romer, L.J., dissented from the judgments of Lord Hanworth, M.R., and Lawrence, L.J., affirming the decision of Clauson, J.

The facts were that a testator died in 1929 having made a will and appointed an executor to whom he was indebted to the extent of £1,000 for money lent. The value of the estate was rather more than £1,000, and the debts were over £3,000. Amongst the debts was one due to the Crown for arrears of income tax in respect of which the Crown claimed priority. It appeared that if the executor were entitled to retain his debt and interest in full and also paid the funeral and testamentary expenses there would be no assets available for the other creditors, including the Crown.

The question depends upon the construction of s. 34 (1) and (2) of the A.E.A., 1925.

Before turning to that section it will be useful to look back a little.

First, with regard to the right of retainer. That right has existed for a long time and could be exercised whether the estate was being wound up by the court or not. An executor could, however, only retain as against creditors in equal degree with himself, a qualification which was of great importance before Hinde Palmer's Act, 1869, put an end to the priority of specialty over simple contract debts. The effect of that Act was considerably to the advantage of executors, as it was held that as a result of making special and simple contract debts rank *pari passu* an executor's right of retainer was extended to enable him to retain a simple contract debt as against a specialty creditor (*Re Harris* [1914] 2 Ch. 395). And so the matter stood immediately before the A.E.A., 1925.

The common law right of the Crown to preferential payment in the estates of insolvent testators or intestates is abolished by the effect of s. 10 of the Judicature Act, 1875, which made the rules in bankruptcy applicable in the administration of such estates by the court. Under these rules the Crown was entitled to priority only to the extent of one year's tax (B.A., 1914, s. 33). To that extent the Crown could claim to have a statutory priority, but the prerogative right of preferential payment was gone. The result was that Crown debts were placed in an equal degree with other debts, but were amongst those which although in the same degree were entitled to priority of payment to all others.

It may be noted here that the right of retainer could be exercised with regard to a debt due to the personal representative as a trustee as well as one owing to him in his own right, but the personal representative could retain only out of legal and not out of equitable assets.

Turning now to the A.E.A., 1925, the first section to be noticed is s. 57, which enacts that the provisions of that Act bind the Crown but not so as to affect the time within which

proceedings for the recovery of real or personal estate vesting in the Crown may be instituted.

It is therefore clear that the Crown is bound by the other provisions of the Act to which I am about to refer.

The important enactment is in s. 34 which reads as follows :—

(1) Where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the rules set out in Part I of the First Schedule to this Act.

(2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person.

Subject as aforesaid, nothing in this Act affects the right of retainer of a personal representative, or his right to prefer creditors.

With regard to sub-s. (1) it is to be observed that the rules referred to are the bankruptcy rules which are thus made to apply to administrations out of court as before the Act they applied to administrations by the court.

Commenting upon this sub-section and the rules in the schedule, Clauson, J., said : " So far as this schedule is concerned, it is clear, reading into it the provisions of the law of bankruptcy, that subject to the payment of funeral, testamentary and administration expenses, the Crown will come first in priority of payment in respect of these claims which it has for a certain amount of income tax and super-tax. The executrix can, so far have no claim whatever to come in front of the Crown."

With regard to sub-s. (2), it is clear that the right of retainer is preserved and that on the one hand it is enlarged by enabling it to be exercised out of all assets, whether legal or equitable, but on the other hand, is restricted to debts owing to the personal representative in his own right.

Then the question is, does the sub-section in preserving the right of retainer effectively save that right as against the statutory priority of the Crown and other creditors who are given priority ?

Clauson, J., and the majority of the members of the Court of Appeal, held that the sub-section had that effect.

Lord Hanworth, M.R., said in this connexion, after referring to the fact that all distinction between simple contract and specialty debts in administration had been abolished : " While of equal degree, some debts are to be allowed a priority, but that does not abolish the right of retainer which was expressly affirmed to remain . . . " Then, after calling attention to s. 57, which provides that the Crown shall be bound by the Act and to the fact that its common law prerogative could not be successfully claimed, his lordship proceeded as follows :— " Then sub-s. (2) makes the two alterations on the right of retainer which have been already noticed, but it does not expressly diminish the right which the above cases prove has been from time to time—even if reluctantly—admitted and preserved. Sub-section (2) might have made a change in the effective right of retainer by postponing it to Crown or other debts ; but it has not done so in terms, and I do not find a reason for saying that the court must hold that it has impliedly done so."

Lawrence, L.J., on the same point, said : " *Primâ facie*, no doubt it would appear anomalous that whilst sub-s. (1) imposes upon the personal representative the duty of administering an insolvent estate in accordance with the bankruptcy law, sub-s. (2) recognises and preserves not only the right of retainer, but also the right to prefer creditors, the latter right especially enabling him to disregard that duty. In my judgment, however, the true effect of sub-s. (2) is that the rights of the personal representative (as amended) are recognised as being what, before the Act, they had been held to be—namely, paramount rights—and that the provisions of sub-s. (1) only come into operation if and so far as those rights are not exercised."

In an interesting dissenting judgment, Romer, L.J., went very thoroughly into the matter. I have no space to deal at length with his lordship's judgment which will repay a careful reading. The learned Lord Justice came to the conclusion that the effect of s. 34 of the A.E.A. and Part I of the First Schedule is that the rights of retainer and preference of a personal representative, although still preserved, cannot be exercised to the prejudice of creditors having priority under s. 33 (1) (*a*) of the Bankruptcy Act, 1914, and that, consequently, the Crown was entitled to be paid one year's income tax out of the assets before the executrix could exercise her right of retainer.

Landlord and Tenant Notebook.

Retrospect—II.

The ninth of the reforms advocated by Mr. Lely in 1902 was " development of the law relating to quiet enjoyment in the light of *Budd-Scott* v. *Daniell* and *Davis* v. *Town Properties Investment Corporation*." Both these cases had just been decided by different divisions of the High Court. *Budd-Scott* v. *Daniell* [1902] 2 K.B. 351, decided, in the first place, that the implying of a covenant for quiet enjoyment did not depend on the use of the word " demise," but arose from the relationship of landlord and tenant ; in so holding, the High Court dissented from *dicta* uttered in the Court of Appeal a few years previously, and followed older decisions. There has been no further development of this part of the law. The case of *Davis* v. *Town Properties Investment Corporation Ltd.* had just been heard in the High Court when Mr. Lely's comments were made ; the judgment was affirmed on appeal a few months later : [1903] 1 Ch. 797, C.A. The main issue concerned the position of a landlord who after the commencement of the term acquires adjoining land, and the decision laid down that the covenant does not enlarge the grant, so that the covenantor can use the new property just as his predecessor could. There has been no further development of this rule. But both cases also touched the question of the scope of the covenant. In *Budd-Scott* v. *Daniell* the argument that the covenant concerned title only was rejected. In *Davis* v. *Town Properties Investment Corporation* one of the lords justices expressed doubt whether indirect interference not affecting either title or possession, could constitute a breach. The question has been dealt with in two subsequent cases. It was held in *Browne* v. *Flower* [1911] 1 Ch. 219, that the covenant did not protect privacy and was not broken if another of the covenantor's tenants was allowed to construct an outside staircase from which he could see into the covenantee's rooms ; and in *Harmer* v. *Jumbil* (*Nigeria*) *Tin Areas Ltd.* [1921] 1 Ch. 200, C.A., that interference with business was also outside the scope of the obligation, so that the storing of explosives on adjoining land, which had that effect, was no breach of the covenant. (It was, however, actionable as a derogation from grant.)

The next two paragraphs of the summary deal with relief against forfeiture. In para. 9 it is said that the law should be extended to forfeiture for disclaimer of title : this has not been done ; and that in the case of forfeiture for non-payment of rent, it should be assimilated to that of relief of forfeiture for other causes. The gulf between the two has, if anything, been widened by *Nance* v. *Naylor* [1928] 1 K.B. 263, C.A., in which, after the landlord had obtained judgment for possession, rent and mesne profits, and commenced an execution, he agreed to withdraw the sheriff in consideration of an undertaking to leave by a certain date ; the tenant then asked for, and obtained relief. In his tenth paragraph Mr. Lely made a plea for the removal of the exception of alienation without consent, in those cases in which the landlord could not be

found. The exception has been removed without qualification: L.P.A., 1925, Sched. VII, repeals the C.A., s. 14 (6) (i), and does not re-enact the offending first words of the clause.

The twelfth stricture criticises the law in *Stacey* v. *Hill* [1901] 1 K.B. 660, C.A., by which the liability of a guarantor of rent is determined by a disclaimer in bankruptcy. Nothing has been done about it.

Lastly, Mr. Lely refers to the statute by which certain leases granted by certain colleges were avoided unless they provided for corn rent on a sliding scale. The statute 18 Eliz., c. 6, the enactment in question, was repealed by the Universities 2nd College Estates Act, 1925, which now governs the position.

A number of important changes and developments which have taken place since 1902 were not foreshadowed in the summary; perhaps Mr. Lely would not consider that they remedied any defects. Most writers, however, considered the law in *Rawlings* v. *Morgan* and *Inderwick* v. *Leech*, by which a reversioner might obtain damages for non-repair of premises he did not want repaired, unfair, and said so; and this law has been disposed of by the Landlord and Tenant Act, 1927, s. 18. The changes relating to business premises effected by the same statute altered a state of affairs more often complained of by the laity than by the legal profession.

The same may be said of its restrictions on the power to refuse consent to alienation, etc. Other changes effected by statute are the abolition of *interesse termini* (L.P.A., s. 149 (1)); the provisions as to the discharge of covenants restricting user (*ibid.*, s. 84), and as to relief from covenants as to decorative repairs (*ibid.*, s. 147). And the Agricultural Holdings Act has been twice re-modelled.

There have also been a number of judicial decisions which have defined and developed the law. The nature of the relationship of landlord and tenant was gone into in *Whitehall Court Ltd.* v. *Ettlinger* [1920] 1 K.B. 680; the law of waste and the tenant's implied covenant as to user in *Marsden* v. *Edward Heyes Ltd.* [1927] 2 K.B. 1, C.A.; the effect of covenants against alienation, in *Jackson* v. *Simons* [1923] 1 Ch. 373, and *Abrahams* v. *Macfisheries Ltd.* [1925] 2 K.B. 18; and aspects of the covenant for quiet enjoyment, other than those dealt with above, in *Malzy* v. *Eichholz* [1916] 2 K.B. 308, C.A., and *Booth* v. *Thomas* [1926] Ch. 397, C.A. The requirements of a forfeiture notice have been settled by *Fox* v. *Jolly* [1916] 1 A.C. 1, and *Hurd* v. *Whaley* [1918] 1 K.B. 448; and, thanks to *Newman* v. *Slade* [1926] 2 K.B. 328, we now have authority on the question of the length of notice required to determine a weekly tenancy.

Our County Court Letter.

ABSENTEE TENANTS UNDER THE RENT ACTS.

In *Hurst* v. *Siviter*, recently heard at Walsall County Court, an ejectment order was claimed in the following circumstances: In 1914 the tenant was one Jones, who had been killed in the war, and his widow had married one Morgan, to whom the tenancy was transferred. On the death of Mrs. Morgan her daughter kept house for her stepfather, and also married the defendant. In April, 1930, Morgan re-married and went to live elsewhere, but had never given up the key, and, although the stepdaughter and the defendant were left in occupation of the house, this was still in the name of Morgan, who paid the rent intermittently. The plaintiff's evidence was that the defendant had never been recognised as tenant, and His Honour Judge Tebbs held that there was no case to answer, as the action should have been brought against Morgan, who was still the tenant, and had consented to the house being occupied by the defendant. In two other cases the evidence was that the tenants had disappeared, leaving lodgers in possession, and adjournments were granted in order that the position might be ascertained. It was pointed out by his honour that the tenancy was not surrendered merely because the tenant had vanished, as he might merely have gone for a trip round the world. The question as to how long an occupation by a relative is compatible with an intention to return (so as to preserve a statutory tenant's right) was considered by the Court of Appeal in *Skinner* v. *Geary* [1931] W.N. 191.

THE SIGNALS OF TRAFFIC CONTROLLERS.

The authority attaching to the above was recently considered at Lincoln County Court in *Taylor* v. *Wright*, in which the claim was for £83 16s. 6d. as damages for negligence. The plaintiff had been cycling, and, on holding out his hand prior to turning, he had received a signal from an R.A.C. guide to proceed, but was knocked down by an overtaking car owned by the defendant. The guide's evidence was that he gave the signal to stop to the defendant's daughter (who was driving), but she stated that (1) she kept her eyes on the guide (who signalled her on) and she did not notice the cyclist until he swerved across and fell upon the car bonnet; (2) the guide then remarked that, in case of accident, the R.A.C. man was always blamed. Corroborative evidence having been given by the defendant, His Honour Judge Langman observed that motorists were in a difficulty, as they were expected to obey traffic controllers' signals, but these might be no defence to an action for negligence. The motorist (by accepting a signal) placed the traffic controller in the position of his agent, and was therefore responsible for any accident caused by a mistaken traffic signal. In the above case—even assuming that the plaintiff did not look behind, and that the guide gave a wrong signal—the mistake causing the accident was the lady's failure to look to the left, and so not noticing the plaintiff's signal. Judgment was therefore given for the plaintiff for £42 5s. 6d.

FOOTBALLERS AND WORKMEN'S COMPENSATION.

In *Parkes* v. *Whitehouse and others*, recently heard at Stourbridge County Court, the claim was for £14 5s. against the committee of the Halesowen Football Club. The applicant was an electrician's labourer, but played for the club at £1 a match, and on one occasion he sustained a sprained ankle, in respect of which he had been paid £4 (collected on the ground) and compensation at 15s. a week for eight weeks. Although the plaintiff had lost the capacity to play football, the respondents contended that compensation was not payable for such loss, in view of the fact that he was capable of earning money at his ordinary work. His Honour Judge Roope Reeve, K.C., made an award for the period prior to the date of the applicant's return to work (less the £6 paid while in hospital), but made no allowance for any subsequent period, as the applicant was able to do something on Saturdays, even if unable to play football. It is to be noted that a professional footballer is a "workman" by virtue of the Workmen's Compensation Act, 1925, s. 3 (2) (*b*), and that s. 5 (3) provides that the manager or members of the managing committee shall be deemed to be the employer.

Reviews.

May it Please the Court. By James M. Beck, LL.D., D.Litt., formerly Solicitor-General of the United States. Edited by O. H. McGuire, A.M., S.J.D., of the Virginia Bar. New York: The Macmillan Company. 1930. 21s. net.

This is a collection of addresses delivered by Mr. Beck, and arguments submitted by him to the Supreme Court of the United States, and well worth bringing together they were, testifying, as they do, both to the legal acumen and argumentative force of the great advocate and to the wide reading of the speaker who can draw with felicity upon the masters of literature of ancient and modern times for illustrations of

his themes. To English lawyers certain of the addresses make a special appeal which is enhanced by the fact that Mr. Beck is a member of the English Bar, having been called at Gray's Inn without the obligation of having to observe the time-honoured formality of eating the regulation number of dinners. This honour, if we remember aright, was chiefly due to the good offices of the late Lord Birkenhead to enable Mr. Beck to appear on behalf of the United States in an appeal to the Privy Council, and fittingly enough one of the illustrations of this volume shows him arrayed not only in the forensic gown, but likewise in the forensic wig which his countrymen in the early days of the Republic rejected with scorn even for their judges. "For Heaven's sake," said Jefferson, "discard the monstrous wig which makes the English judges look like rats peeping through bunches of oakum." That Mr. Beck was much gratified by the compliment paid to him by Gray's Inn in calling him to the Bar and also electing him an honorary bencher is shown in the address which he gave to the Ohio Bar Association at Cleveland in January, 1929, when he took as his subject the part played by the Inns of Court in the education of English lawyers, and discoursed on the charm of their surroundings, the literary and historic memories which cluster round them, and in particular recalled how members of the Inns worked and played in Tudor times. Of the other addresses contained in the volume, mention must be made of that entitled "The Old and New Supreme Court of the United States." In this he pleasantly calls up some of the great advocates of the past who appeared before it—men like Daniel Webster, Horace Binney, Joseph Hopkinson and others—as well as refers to the changes that have been introduced into the practice of the court, notably with regard to the limitation of arguments. Some recent cases in our own courts, which have been remarkable chiefly for the protracted arguments presented by the Bar, almost make one envious of this particular regulation of the United States Supreme Court. Another of Mr. Beck's addresses which should make a strong appeal to lawyers on this side of the Atlantic, as it no doubt did to the American audience for whom it was prepared, is that on "The Lawyer and Social Progress," in which, like Lord Atkin in his recent address to the Holdsworth Club at Birmingham, he dwells with effective emphasis on the services which through the ages lawyers have rendered to the state and to the individual. He cites a catena of striking illustrations of the immense power for good which the law has exercised—how it has stood for justice in the face of oppressors and how it has mediated in the complicated relationships between man and man. Although perhaps of less interest to English readers, the address on Elihu Root, the distinguished lawyer and statesman, deserves mention. The second part of the volume consists of speeches delivered in Congress or at the Bar, and affords admirable examples of Mr. Beck's parliamentary and forensic powers. The only criticism of a mildly adverse character which we should be disposed to make on an otherwise excellent book is with regard to the index. This has been compiled upon painfully primitive lines, consisting simply of proper names without more detail. For example, we notice the entry: "Matthew," and wishing to discover his identity we turn to the page indicated and find a quotation from St. Matthew's Gospel! Another entry: "Roy, Rob," is merely a reference to Wordsworth's lines on the Scottish outlaw! For such vagaries Mr. Beck, however, cannot be held responsible.

Books Received.

Library of Congress. Guide to the Law and Legal Literature of France. Prepared under the direction of Edwin M. Borchard. By George Wilfred Stumberg. 1931. Imperial 8vo. pp. v and (with Index) 242. Washington: United States Government Printing Office $1.25.

In Lighter Vein.

The Week's Anniversary.

On the 19th August, 1738, died Joseph Jekyll, after filling the office of Master of the Rolls since 1717. He left £20,000 towards paying off the National Debt, a fruitless munificence, which Lord Mansfield considered as useless as if he had tried to stop the middle arch of Blackfriars bridge with his full-bottomed wig. This same wig figures in Pope's description of him as:—

". . . an odd old Whig who never changed his principles or wig."

He was for many years an influential Member of Parliament, one of his notable actions being to introduce a Bill for the taxing of spirituous liquors and the licensing of retailers. Englishmen in the eighteenth century were less docile than to-day in the face of public interference. Jekyll's house had to be guarded for fear of the people and he himself, venturing to cross Lincoln's Inn-fields, was knocked down and roughly handled.

Stormy Proceedings.

At the end of last term, a violent storm of wind and rain interrupted the Lord Chief Justice while he was delivering judgment in the Court of Criminal Appeal and he was obliged to pause for a while. The fury of the elements had no such effect on Mr. Justice Field in the days of his deepest deafness. Once, when a great clap of thunder shook his court, he threatened angrily that "if that unseemly noise occurred again he would have the court cleared." On the other hand, Macdonald, C.J., rose to a rather exaggerated height of eloquence when a terrific storm of thunder and lightning seemed likely to interrupt proceedings at the Hertford Assizes. "Gentlemen," he said, "we are preparing to stand undaunted in the great day when the heavens being on fire shall be dissolved, and now, whatever may befall us, we cannot surely be found better employed than in the administration of justice."

Messengers from Beyond.

A spiritualist of Lyons has appeared in the French courts to answer a charge of obtaining money by false pretences. It is alleged by the prosecutor that at séances arranged for his benefit, the accused purported to communicate with various defunct celebrities and notorieties whose "messages" usually enjoined the payment of money on some pretext or another. Bearers of supernatural messages do not as a rule find favour with the legal mind. One such delivered himself most incautiously into the hands of Holt, C.J., the great foe of the witchcraft laws. The alleged prophet waited on him with the command: "I come to thee from the Lord God who has sent me and would have thee grant a *nolle prosequi* for John Atkins, His servant, whom thou hast cast into prison." To this the Chief Justice replied: "If the Lord had sent thee, it would have been to the Attorney-General, for He knows that it belongeth not to the Chief Justice to grant a *nolle prosequi*, but I, as Chief Justice, can grant a warrant to commit thee to bear him company." And he did.

No Joke.

"Three years for a joke" was the caption under which a weekly paper discussed a case tried by Talbot, J. Again, quite recently, a man committed for trial at the Kent Assizes, pleaded that he only wrote an alleged blackmailing letter in jest. A similar defence failed in that well-known instance, when a prisoner, tried before Mr. Baron Alderson for stealing a pair of shoes, declared that he took them as a practical joke. "How far did you carry them?" asked the judge. "About a mile and a half, my lord." "I think that was carrying a joke too far." And the jury thought so too.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Statutory Tenants' Right to Light and Air.

Q. 2260. A is the owner of a row of twelve houses which are occupied by statutory tenants, who pay the maximum amount allowed under the Rent Restrictions Act. The street in which these twelve houses are situated is a narrow street, and until recently a row of similar houses faced the twelve houses. Some few months ago a firm of merchants purchased the houses on the other side of the street, pulled them down and have erected a large factory, which towers above the twelve houses and seriously obstructs the access of light and air to them. A, the landlord of the twelve houses, made a claim upon the merchants for obstruction to his right of light and air, and received a sum of £500 from the merchants by way of compensation. The tenants are seriously affected in their comfort by this obstruction, but the landlord refused to make any compensation to the tenants or to allow them any reduction from their rents. Have the tenants any remedy in respect of this obstruction and, if so, against whom?

A. It was held in *Jones* v. *Chappell* (1875), 20 Eq. 539, that a weekly tenant can obtain an injunction, and the tenants of the row of twelve houses could join as co-plaintiffs, as in *Truman* v. *London Brighton and South Coast Railway* (1885), 29 Ch. 89. Their difficulty is, however, that their interest in the premises is limited, and their claim to an injunction would probably be dismissed, without prejudice to an action for damages, as in *Jacomb* v. *Knight* (1863), 11 W.R. 812. The facts of the present case are similar to those in *House Property and Investment Company* v. *H.P. Horse Nail Company* (1885), 29 Ch. D. 190, in which the plaintiffs, as lessees for ninety-nine years, claimed damages for nuisance from the defendants' factory, whereby the letting value of a row of eleven houses was diminished. Two of the tenants were also joined as co-plaintiffs, by reason of nuisance interfering with the comfort and health of their families. The tenants in the present case, therefore, are not estopped by the acceptance of £500 by A, as this was for damage to his reversion—in anticipation of his not being able to re-let at the present rents. The present tenants, however, cannot claim any part of this compensation from A by way of reduction in rent, and their remedy is against the merchants direct upon a different cause of action from A, viz., damage to their present health and comfort.

Costs of Bankruptcy Notice.

Q. 2261. A, a mortgagor, makes default under his mortgage. B, the mortgagee, issues a writ against A for payment of the amount due and obtains judgment. A does not pay under the judgment, and B issues and serves on A a bankruptcy notice. A pays the amount due under the bankruptcy notice before it expires. B now claims from A £2 2s. for the costs of the bankruptcy notice. A contends that as he complied with the bankruptcy notice within the stipulated time he is not liable for the costs of the notice. (*a*) Is B entitled to his costs of the bankruptcy notice as a judgment creditor? (*b*) If not is B entitled to them in his capacity as mortgagee?

A. The consequence of the payment under the bankruptcy notice is that no act of bankruptcy has been committed by A, and therefore a petition cannot be presented by B, who also has no remedy under the judgment, which is now satisfied. B has a cause of action against A, however, for the £2 2s., which may be recovered in the County Court in fresh proceedings or may be the subject of an application under Bankruptcy Rule No. 115. See *Anon.* (1854), 23 L.T. (o.s.) 129. Both questions are, therefore, answered in the affirmative.

Damage from Hay Seeds.

Q. 2262. A is the owner of a house and garden erected on a plot of land purchased from a building estate, and on each side of his land there is an unsold plot belonging to his vendor. Hay has been allowed to grow on each of these plots, which are unsold, and it is now seeding, compelling A to employ his gardener in an unusual amount of weeding. Has A any method of compelling the owner of the adjoining plots to cut the hay? The property is in Surrey.

A. The growing of hay is a natural user of the land by the vendor, and the accumulation of seeds is therefore not actionable under the rule in *Rylands* v. *Fletcher*, even though they escape and do damage to A's garden. It was held in *Giles* v. *Walker* (1890), 24 Q.B.D. 656, that even thistles may be allowed to grow, and spread their seeds, without rendering the owner of the land liable to a neighbour for the consequent damage by the failure to mow. A cannot therefore compel the adjoining owner to cut the hay.

The Rights of Street Photographers.

Q. 2263. An order has been made by a certain corporation under the Town Police Clauses Act, 1847, s. 21, prohibiting during certain periods of the year and between certain hours of the day hawkers, pedlars, photographers, etc., using certain streets for the purpose of plying their trade or calling, the reason being that the streets are liable to be thronged and obstructed. A is a photographer and employs a number of men to take photographs of visitors. The employees carry cameras and take photographs of any persons wishing to be photographed. The employees do not take up stationary positions, but are continually on the move. They do not molest people, and those wishing to be photographed do not even have to come to a standstill. There is therefore no obstruction. The photograph is instantaneous and the employee then gives the person a card showing that the proofs can be seen at his shop next day. There is no obligation on the part of the person photographed to buy a photograph at all, but if when they see the proofs at the shop they like them, they can order as many as they please. A has now been summoned under the order. Our contention is that the order, in so far as it is made applicable to A, is unreasonable.

A. It will be necessary to distinguish A's case from that of the ice-cream vendor (who had a box tricycle) in *Edwards* v. *Wanstall* (1929), 46 T.L.R. 101; 142 L.T.R. 288. It was there held that an order under the section now in question was valid (without confirmation by the Minister of Health as a bye-law) and the case was therefore remitted to the justices to convict. All the decided cases, however, have dealt with hawkers with wheeled vehicles, and no case has gone the length of deciding that a foot passenger may be guilty of obstruction—by adopting A's procedure in the ordinary course of user of the King's highway. A is not a pedlar, as he does not effect a sale in the thoroughfare, and at most he is merely canvassing for orders. Photography is not an illegal occupation, and A should not receive treatment similar (for example) to that of a street bookmaker. The question does

not state whether A has been summoned personally, and (if he merely remains in charge of the shop) he is not guilty of a breach of the order. The actual employee of A is the person who commits the offence (if any) and A does not even aid and abet if he is not present. A might be charged with counselling and procuring his employee to commit the offence, but the prosecution would have difficulty in obtaining any evidence against A on this charge. The opinion is therefore given that, if "the employees do not take up stationary positions, but are continually on the move" the order is unreasonable as applied to A. The assumption is that a snapshot is taken with a press camera, but, if a short cinema film is taken (from a tripod), even a momentary halt will be an offence. The question is therefore one of mixed law and fact, as any conviction must be based upon obstruction, and the order is unreasonably wide if it purports to lay down that the mere plying of a specified calling shall be an offence.

Rent Restriction Acts—Improvements.

Q. 2264. Our client is the owner of a block of nine cottages comprising three houses with separate yards, with a pump in each yard, and three pairs with a pump common to each pair. The closets have been on a semi-water carriage system inasmuch as the soil has been carried away by water to the main sewer, but the closets have had no cistern or other flushing apparatus. To flush it has been necessary to carry a bucket of water thereto. The owner was recently required by the sanitary authorities to re-lay the drains, and as this work was being done he was also requested to provide tap water for the cottages as the well water was found to be impure. The owner has connected the cottages with the town water supply and has put a tap over the sink in *each* of the cottages. The owner has also provided water to the closets with a proper flushing system. Are these works "improvements" within s. 2 (1) (*a*) of the Rent Act? The tenants, who are being backed by a local association, contend that the work is "repairs," inasmuch as the landlord is obliged to keep the premises reasonably fit for human habitation and with a supply of pure water as a condition of the tenancy. The owner contends that as pump water is very common in the particular locality, it was only necessary for him to repair the existing pumps or at the best to place taps in the yards in the place of such pumps, and he contends that all work he has done are "improvements," for which he is entitled to an increase of rent. If there is any authority on this question, or if reference can be made to any article dealing with improvements under the Acts, the information will be appreciated.

A. We regret we cannot refer the querist to any authority decided under s. 2 (1) (*a*). It should be noted that "repairs" is defined in sub-s. (5) as repairs necessary for keeping the premises in good and tenantable repair, and the obligation to make them reasonably fit for human habitation imposed by another statute is not incorporated. In our view repairs refers to the repair of the premises in the state in which they were let. *Proudfoot* v. *Hart* (1890), 25 Q.B.D. 42, is of course a leading authority on the meaning of tenantable repair, and *Lyon* v. *Greenhow* (1892), 2 T.L.R. 457 and *Harrison* v. *Barney* [1894] 3 Ch. 562 are authorities that a covenant for repair does not imply an obligation to put in a new drainage system. Our view therefore is that the works in question, if the local authority was entitled to insist on them, are "improvements" for which additional rent can be claimed. If the local authority was not in a position to enforce the request, the objection might be raised that they were improvements voluntarily done by the landlord without any agreement with or request by the tenants.

A UNIVERSAL APPEAL.

To Lawyers: For a Postcard or a Guinea for a Model Form of Bequest to the Hospital for Epilepsy and Paralysis, Maida Vale, W.9.

Notes of Cases.

House of Lords.

Louis Dreyfus & Co. *v.* **Tempus Shipping Co.**

26th June.

Shipping—Loss by Fire—General Average—Contribution—Claim by Cargo-owners—Unseaworthiness of Ship—Merchant Shipping Act, 1894, s. 502.

This was an appeal from the Court of Appeal, and raised two questions: (1) Whether the owners of a British ship were entitled to recover against cargo-owners a contribution towards general average expenditure incurred through a fire due to unseaworthiness having regard to s. 502 of the Merchant Shipping Act, 1894; and (2) Whether that section debarred cargo-owners from recovering loss to cargo in the same circumstances. The respondents, the Tempus Company, were the owners of the ship, and the appellants were the owners of a cargo of maize. Fire broke out in the ship's bunkers, which destroyed part of the maize and threatened to destroy more and to endanger the ship. The captain accordingly put into port and took precautionary steps by which general average expenses were incurred. The present action was brought against the cargo-owners for contribution and the cargo-owners counterclaimed for the value of the goods destroyed. The Court of Appeal held that the counterclaim was bad, but that the claim for general average succeeded.

Lord Dunedin (whose opinion was read by Lord Thankerton) said that with regard to the second question the cases on the point were not only the unanimous decision of learned judges, but they had ruled the conduct of shipping for seventeen years, and it would obviously be against their lordships' custom to disturb such a practice unless they thought they were clearly wrong. He could not say any such thing. He thought they were rightly decided, and that the decision of the courts below as to the counterclaim was right. With regard to the first question as to general average contribution, did s. 502 put the position into the same as that of the *Carron Park*, 15 P.D. 203? That was what had caused the difference of judicial opinion in the courts below, and he did not hesitate to say that he was at first inclined to agree with Scrutton, L.J., and Wright, J., whose opinion was fortified by the dictum of Lord Halsbury in *Greenshields Cowie & Co.* v. *Stephens & Sons* [1908] A.C. 431, where, dealing with s. 502, he said: "The statute is not dealing with average at all." The argument which prevailed in the end with him (Lord Dunedin) was this: The answer to the exception of the right to claim general average turned entirely on the question of whether the shipowner had committed an actionable wrong. In this case there was no actionable wrong in what the shipowner did, and therefore the answer to the exception was not a good one. As to the dictum of Lord Halsbury, it was quite true, as he said, that the section was not dealing with general average, but none the less it might have an effect upon it. The dictum did not displace his argument. The appeal must be dismissed with costs.

Lords Warrington, Atkin, Thankerton and Macmillan concurred.

Counsel: *Sir T. Inskip*, K.C., *Sir R. Aske* and *F. M. Vaughan*; *Norman Raeburn*, K.C., and *R. I. Simey*.

Solicitors: *Ince, Roscoe, Wilson & Glover*; *Botterell and Roche*, for *Vaughan & Roche*, Cardiff.

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

TEMPLE GATE CLOSED.

A famous gate leading from Fleet-street to the Inner Temple has been temporarily closed to the public as a precautionary measure, pending repairs.

Some coping stone on one of the buildings in Dr. Johnson's court recently became dislodged, and fell into the passage, striking a passer-by on the side of the head.

High Court—King's Bench Division.

Marsden Urban District Council *v.* Sharp and Another.

Rowlatt, J. 30th June.

CONTRACT—ROAD-MAKING—DEFECTIVE CONCRETE—CONTRACTUAL TIME LIMIT FOR DISCOVERY—FIVE YEARS—NO LIABILITY THEREAFTER.

Special case stated under s. 7 of the Arbitration Act, 1889.

In this case a firm of contractors had been engaged by the Marsden Urban District Council in making a road across Standedge Moor. The council now claimed that the work had been done badly, and that they were entitled to damages. By clause 25 of the contract—"Should it at any time subsequent to the termination of the period of maintenance up to but not exceeding a period of five years from the date of the completion of the works be discovered that the terms of this specification have been violated by the execution of bad, insufficient or inaccurate work the council shall be at liberty to make good such work and to recover the cost thereof from the contractor . . . ." The council alleged that before the expiration of the period of five years they discovered that the concrete which the contractors had used was defective and that the road was beginning to fall into bad repair. They also discovered that further damage had occurred after the expiration of the five year period. The council, therefore, claimed a sum from the contractors by way of damages. The matter (as provided in the contract) was referred to arbitration, and the arbitrator stated the present case for the opinion of the court. The only point to be decided by the court was whether the council could recover for work which was not discovered to be defective until after the five years had passed.

ROWLATT, J., said that the work was completed on the 15th January, 1925, and by December, 1929, certain portions of the road were discovered to have become defective. On the 14th January, 1930, the council delivered points of claim in the arbitration alleging a violation of the specification by the use of concrete not in accordance with its terms. The question was how far the discovery made by December, 1929, carried them. The council's contention was that, there having been discovered a violation of the specification as to concrete, all the bad concrete must be made good, whatever the area of inferiority subsequently laid bare. The contractors submitted that by discovering some concrete to be bad the council did not discover that it was all bad, and that they, the council, must be limited to their actual discovery. To say that the discovery of some bad patch opened up the question of all the concrete, possibly in places remote and detached from the original site of the discovery, was not, he (his lordship) thought, to give a fair or business-like effect to the clause. In his view the substance of the clause was to provide for defects appearing within five years to the extent of that appearance. The award stood for £1,928, therefore, and the contractors would have the costs of the present argument.

COUNSEL: *Rayner Goddard*, K.C., and *C. J. Frankland*, for the Council; *C. E. E. Jenkins*, K.C., and *William Stewart*, for the contractors.

SOLICITORS: *Jaques & Co.*, for *Hall, Walker & Norton*, Huddersfield; *Bell, Brodrick & Gray*, for *Holiby & Procter* York.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division

Smith *v.* Thompson and Others. Langton, J. 14th July.

PROBATE—REVOCATION—EARLIER WILL EXERCISING SPECIAL POWER OF APPOINTMENT—LATER WILL CONTAINING GENERAL REVOCATION CLAUSE—WANT OF KNOWLEDGE AND APPROVAL—EXERCISE OF POWER NOT REVOKED.

This probate action raised the question as to whether a general revocation clause in a will operated to revoke the exercise under an earlier will of a special power of appointment. The testatrix, who was a widow, died in May, 1929. By a will of November, 1910, she exercised a power of appointment contained in an ante-nuptial settlement, under which she could appoint the settled fund in favour of all or any of her late husband's nephews and nieces, by appointing in favour of one niece, Miss Evelyn Mary Smith. Miss Smith and Mr. Spencer, a solicitor of East Retford, who drafted the will, were appointed executors, Miss Smith being also residuary legatee of the testatrix's free property. In April, 1920, the testatrix duly executed another will drafted for her by a relative which read as follows: "I revoke all wills by me at any time heretofore made and declare this to be my last will and testament. I give devise and bequeath all my real and personal estate whatsoever and wheresoever unto my sister, Fanny Eliza Clarke, for her own absolute use and benefit." This sister predeceased the testatrix. Miss Smith, the plaintiff, now propounded the will of 1910, put the defence to proof of the will of 1920, and alleged that the testatrix did not know and approve of the revocation clause therein. The first defendant, the personal representative of a deceased sister of the testatrix, claimed that the later will revoked the former except for the exercise of the power of appointment. The other defendants, a nephew and nieces of the testatrix's late husband, propounded the will of 1920 *in toto*, claiming that it revoked the whole will of 1910. Evidence having been given, counsel for the plaintiff submitted that the testatrix did not know and approve of the revocation clause in the later will in the sense of appreciating its effect on the power of appointment previously exercised, and that the court was at liberty to look at the surrounding circumstances in view of the patent ambiguity on the face of the later will. He cited various authorities, placing particular reliance upon the judgment of Sir Herbert Jenner in *Gladstone* v. *Tempest* (1840), 2 Curt. 65. It was submitted contra that the later will must be taken at its face value, no evidence having been adduced to show that the testatrix did not know and approve its contents. Counsel cited "Mortimer on Probate," 2nd ed., at p. 146.

LANGTON, J., in giving judgment, held, on the authority of *Gladstone* v. *Tempest*, *supra*, and other cases cited, that where there was evidence which satisfied the court that a testator did not intend to revoke an earlier power of appointment, the court was not bound to give effect to a general revocatory clause. If it were essential to any part of any will that a testator should know and approve of the contents, the court would take cognisance of it in the present case. He (his Lordship) was satisfied that the testatrix did not know and approve of the revocatory clause. He thought that she had no idea that by that clause she was revoking the earlier exercise of the power of appointment. The result was that he pronounced for the two documents as together containing the true last will of the testatrix and declared that by the last will she did not revoke the exercise of the power of appointment in the earlier will. There would be a grant of administration with the wills annexed to Miss Smith and Mr. Spencer, the executors named in the will of 1910. All of the defendants would be allowed their costs out of the estate as between solicitor and client.

COUNSEL: *Clifford Mortimer* and *F. S. H. Bryant*, for the plaintiff; *Tyndale*, for the first defendant; *Bush James*, for the other defendants.

SOLICITORS: *Waterhouse & Co.*, for *E. S. Spencer*, East Retford; *Wilberforce Allen & Bryant*, for *A. H. Headley*, Leicester; *Bell, Brodrick & Gray*, for *Jones & Carr*, East Retford.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

REGISTRY OF BUSINESS NAMES.

The Registry of Business Names has been removed to Princes House, Kingsway, W.C.2, as from 4th August.

THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

A READING

Delivered before the Honourable Society of the Middle Temple, on 11th June, 1931,

BY

Sir CECIL HURST, G.C.M.G., K.C.B., LL.D. (Hon.), LL.M.,

Judge of the Permanent Court of International Justice; Lent Reader, 1931.

THE TREASURER, SIR ALFRED TOBIN, IN THE CHAIR.

(*Continued from page* 536.)

When the scheme came before the Council of the League this provision was cut out. The Council took the view that to oblige every state which adopted the scheme for the Court to accept its jurisdiction as obligatory, went beyond Article 14, which says that the Court shall be competent to hear any dispute "*which the parties thereto submit to it*," these words implying a voluntary and not compulsory submission. The truth is that the proposal was premature; the world in general—particularly the Great Powers—was not ready in 1920 for universal compulsory arbitration of international disputes. The decision of the Council, however, caused great disappointment among the enthusiasts, and in the autumn of that same year, when the scheme for setting up the Court came up for adoption by the Assembly, a proposal was made that states should be at liberty, *if they so desired*, when they accepted the scheme for the Court to accept also its jurisdiction as obligatory in legal disputes. This idea met with favour and was accepted. Article 36 of the Statute was thereupon worded as follows:—

> "The Members of the League and States mentioned in the Annex to the Covenant may, when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognise as compulsory *ipso facto* and without special agreement in respect to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:—
>
> "(*a*) the interpretation of a treaty;
>
> "(*b*) any question of international law;
>
> "(*c*) the existence of any fact which if established would constitute the breach of an international obligation;
>
> "(*d*) the nature or extent of the reparation to be made for the breach of an international obligation."

It is the making of the declaration envisaged in the above provision which is characterised as the acceptance of the Optional Clause.

In the first few years after 1920 the movement in favour of its acceptance made but slow progress. The states which accepted it were of minor importance. In 1924, at the time of the Geneva Protocol, France signed it provisionally, but Great Britain held back. In 1929 Great Britain accepted it, and this led to a rush of other acceptances; so much so that 1929 was nicknamed at Geneva the "Optional Clause Year."

The second great branch of the Court's jurisdiction is that of giving advisory opinions on questions put to it by the Council or the Assembly of the League. "The Court," says Art. 14 of the Covenant, "may also give an advisory opinion upon any dispute or question referred to it by the Council or the Assembly."

This is a branch of the Court's jurisdiction which has created a good deal of misgiving: some people have been afraid that it would convert what was intended to be a great public court of justice into a private committee of legal advisers of the Council of the League.

Whatever justification there might have been for these misgivings at the outset—and I think myself there was none—the Court has from the first made it abundantly clear that it intended to handle any question submitted to it by the Council or Assembly of the League for opinion on a strictly judicial basis.

An analogous provision is to be found in s. 4 of the Judicial Committee of the Privy Council Act, 1833, which empowers the Judicial Committee to give an advisory opinion upon any matter referred to it by the Crown. A similar provision is also to be found in the legislation setting up the Supreme Court of Canada.

Curiously enough it is in the United States of America that the greatest hesitation about this advisory jurisdiction of the Court has been expressed: it has even been made an excuse on the part of many people for the hesitation displayed by the United States Government to become a party to the treaty setting up the Court, and yet the first instance, which I know, of conferring upon a court the right to give an opinion upon questions submitted by the Government, is to be found in the Constitution of the State of Massachusetts.

The power to submit questions for opinion to the Judicial Committee of the Privy Council has been used only sparingly by the Government in this country, but it was in this way that the problems relating to the Labrador boundary between Canada and Newfoundland, and the disputes between the British South Africa Company and the Government of Rhodesia in 1918, were brought before the Privy Council.

Nineteen advisory opinions have already been rendered by the Court to the Council of the League, and three more questions are at present pending. In fact, these requests for an advisory opinion have been more numerous in the past than disputes submitted direct to the Court by the states concerned.

So far as possible the Court has assimilated the procedure in connexion with the rendering of advisory opinions to that which is followed in contentious cases. Whenever the question submitted relates to a dispute, the Governments which are particularly interested in the question are invited to file written statements of their views and to participate in the oral arguments exactly as if they were parties to a suit. Since 1927 this assimilation has been carried further still, and the provision which entitles a party to a contentious case before the Court to nominate one of its own nationals to sit as a judge *ad hoc* if there is not already in the Court a judge of that nationality, has been extended to advisory cases arising out of a dispute.

In the *Eastern Carelia Case*, where the Council of the League asked for an advisory opinion on a question relating to a dispute between Soviet Russia and Finland, but where the Soviet Government refused to appear before the Court or take any part in the proceedings the Court declined to give an opinion. Perusal of the decision shows that the Court felt that, when exercising its advisory jurisdiction, it acts and must act in a strictly judicial capacity, and for that reason cannot decide a question in dispute between two states unless both of them are before the Court, or have subjected themselves to its jurisdiction.

The question has been asked whether an advisory opinion given by the Court has any binding force. Technically it may have none. The Council of the League as a general rule

passes, I believe, a resolution adopting or taking note of the opinion. In fact, however, the opinions given by the Court are always accepted as a matter of course, and carry the same weight as judgments rendered in a contentious case.

Let me remind you that a decision of the Judicial Committee of the Privy Council is couched in the form of humbly advising His Majesty. Could anything be less like a decision of a court? But no one doubts the binding character of a decision of the Privy Council.

This advisory jurisdiction of the Court shows no signs of falling into desuetude. No less than four requests for advisory opinions have been made by the Council in the two sessions it has held this year.

(*To be continued.*)

Rules and Orders.

THE POOR PRISONERS' (COUNSEL AND SOLICITOR) RULES, 1931,* DATED JULY 3, 1931, MADE BY THE ATTORNEY-GENERAL, WITH THE APPROVAL OF THE LORD CHANCELLOR AND THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, IN PURSUANCE OF SECTION 4 OF THE POOR PRISONERS' DEFENCE ACT, 1930 (20 & 21 GEO. 5. C. 32).

1. Every Clerk of Assize and Clerk of the Peace shall keep a list of solicitors who are willing to undertake the defence of poor prisoners, and shall insert in such list the names of all solicitors who are willing so to act. The name of any solicitor shall be removed from the list, either on the application of the solicitor himself or by direction of any Judge or Chairman of Quarter Sessions. A copy of such list shall be sent to every Clerk to Justices in the county or quarter sessions district.

2. Every Clerk of Assize and Clerk of the Peace shall keep a list of the members of the Bar attending the circuit or sessions who are willing to appear as counsel for poor prisoners, and shall insert in such list the names of all such members of the Bar who are willing so to appear. A copy of such list kept by a Clerk of Assize shall be sent to every Clerk to Justices in the county.

3. The Clerk of Assize, Clerk of the Peace, or Clerk to Justices acting for any Certifying Authority, Court of Summary Jurisdiction or Examining Justices shall keep a list of all cases in which application is made to them for a defence certificate or legal aid certificate or in which such a certificate is offered by them and all cases in which an order is made under subsection (3) of section 3 of the Poor Prisoners' Defence Act, 1930, and shall record therein (*a*) the name of the prisoner, (*b*) in general terms the charge or charges preferred, (*c*) the date and the result of such application or offer, and (*d*), in the case of a Clerk to Justices, whether the application relates to the prisoner's defence before the Justices or before the Court to which he is committed for trial; and every such Clerk shall send a copy of such list to the Secretary of State for the Home Department at such times as the Secretary of State may from time to time direct.

4.—(1) Any defence certificate granted by Committing Justices in pursuance of section 1 of the Poor Prisoners' Defence Act, 1930, shall be in Form A(i) or A(ii) in the Schedule hereto; and the certificate shall as soon as it has been granted be sent by the Clerk to the Justices to the Clerk of Assize or Clerk of the Peace, together with the name of the solicitor assigned.

(2) Any defence certificate granted by a Judge or a Chairman of Quarter Sessions shall be in Form B(i) or B(ii) in the Schedule hereto.

(3) Where the charge is one of murder or the case appears to present exceptional difficulty, a Certifying Authority in granting a defence certificate may certify that in its opinion the interests of justice require that the prisoner shall have the assistance of two counsel.

5. Any legal aid certificate granted by a Court of Summary Jurisdiction or Examining Justices in pursuance of section 2 of the said Act shall be in Form C in the Schedule hereto. If the prisoner is committed for trial, the certificate shall be forwarded with the depositions to the Clerk of Assize or Clerk of the Peace together with the name of the solicitor and counsel (if any) who has acted or appeared.

6.—(1) Any Justices, Judge, or Chairman of Quarter Sessions, who grants any such certificate as aforesaid shall at the same time, after taking into consideration any representations which the prisoner may make, assign to him from the list kept under Rule 1 a solicitor to whose services the prisoner shall be entitled.

(2) Whenever a defence certificate is granted, a copy of the depositions shall be furnished to the solicitor so assigned by the Justices' Clerk, Clerk of Assize, or Clerk of the Peace, as the case may be.

7. Any member of the Bar whose name appears upon the list kept under Rule 2 may be instructed on behalf of the prisoner by the solicitor so assigned and in any case where a Certifying Authority has certified in pursuance of Rule 4 (3) that in its opinion the interests of justice require that the prisoner shall have the assistance of two counsel, two such members of the Bar, or one such member of the Bar and a member of the Bar being one of His Majesty's Counsel practising upon the circuit who has expressed his willingness to undertake the defence, may be instructed.

8.—(1) These Rules may be cited as the Poor Prisoners' (Counsel and Solicitor) Rules, 1931.

(2) These Rules shall come into operation forthwith.

(3) The Poor Prisoner's (Counsel and Solicitor) Rules, 1927,(†) are hereby revoked.

William A. Jowitt,
Attorney-General.

Law Officers' Department.
3rd July, 1931.

Approved, *Sankey*, C.
J. R. Clynes.

SCHEDULE.

FORM A(i)—DEFENCE CERTIFICATE OF COMMITTING JUSTICES IN CASES OF MURDER.

We [*or* I] the Committing Justice[s] in the case of , having committed him for trial on a charge of murder and being satisfied that his means are insufficient to enable him to obtain legal aid in the preparation and conduct of his defence at the trial, do hereby grant in respect of him this defence certificate.

[*And we* [*or I*] *do further certify that in our* [*or my*] *opinion the interests of justice require that he shall have the assistance of two counsel.*]

Dated this day of , one thousand nine hundred and

A. B. ,
C. D. ,
Justice[s] of the Peace for the County [*or* Borough] of

NOTE.—The prisoner has been committed to Prison .

FORM A(ii)—DEFENCE CERTIFICATE OF COMMITTING JUSTICES IN CASES OTHER THAN MURDER.

We [*or* I] the Committing Justice[s] in the case of , having regard to all the circumstances of the case (including the nature of the defence, if any, set up by him), are [*or* am] satisfied that it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence at the trial, and that his means are insufficient to enable him to obtain such aid, and we [*or* I] do hereby grant in respect of him this defence certificate.

[*And we* [*or I*] *do further certify that in our* [*or my*] *opinion, by reason of the case appearing to present exceptional difficulty, the interests of justice require that he shall have the assistance of two counsel.*]

Dated this day of , one thousand nine hundred and

A. B. ,
C. D. ,
Justice[s] of the Peace for the County [*or* Borough] of

NOTE.—The prisoner has been committed to Prison [*or* has been released on bail and may be communicated with at].

FORM B(i)—DEFENCE CERTIFICATE OF JUDGE IN CASES OF MURDER.

I, A. B. , having regard to the fact that is committed for trial on a charge of murder and being satisfied that his means are insufficient to enable him to obtain legal aid in the preparation and conduct of his defence at the trial, do hereby grant in respect of him this defence certificate.

[*And I do further certify that in my opinion the interests of justice require that he shall have the assistance of two counsel.*]

Dated this day of , one thousand nine hundred and

A. B. ,
One of His Majesty's Justices of the High Court.

FORM B(ii)—DEFENCE CERTIFICATE OF JUDGE OR CHAIRMAN IN CASES OTHER THAN MURDER.

I, A. B. , having regard to all the circumstances of the case (including the nature of the

* These Rules supersede Provisional Rules to like effect dated December 17, 1930, which came into operation January 1st, 1931.

† S.R. & O. 1927 (No. 537), p. 321.

defence, if any, set up by) am satisfied that it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence at the trial, and that his means are insufficient to enable him to obtain such aid, and I do hereby grant in respect of him this defence certificate.

[*And I do further certify that in my opinion, by reason of the case appearing to present exceptional difficulty, the interests of justice require that he shall have the assistance of two counsel.*]

Dated this day of , one thousand nine hundred and

A. B.
One of His Majesty's Justices of the High Court, *or*
Chairman (*or* Deputy *or* Acting Chairman) of Quarter Sessions, *or*
Recorder (*or* Deputy Recorder) of

FORM C—LEGAL AID CERTIFICATE BY JUSTICES.

We [*or* I]*, being [a] Justice[s] of the Peace before whom is charged with

are [*or* am] satisfied that his means are insufficient to enable him to obtain legal aid and that by reason of the gravity of the charge [*or* of exceptional circumstances] it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence before us [*or* me], do hereby grant in respect of him this legal aid certificate.†

Dated this day of , one thousand nine hundred and

A. B.
C. D.
Justice[s] of the Peace for the County [*or* Borough] of

* NOTE.—The certificate should be given by two Justices in a case dealt with summarily.

† NOTE.—When the prisoner is charged with murder *and the Justices think fit*, add " and direct that he be entitled to have counsel assigned to him as well as a solicitor for that purpose."

Legal Notes and News.

Honours and Appointments.

The Board of Trade have appointed Mr. F. GREENWOOD to be Registrar of Companies and Registrar of Business Names, in place of Mr. C. C. Gallagher, who has been appointed to act as an Assistant Secretary to the Board of Inland Revenue. Mr. W. A. MCKEARS has been appointed Assistant Registrar in succession to Mr. F. N. Whittle, who is retiring from the service.

The Master of the Rolls has appointed Mr. GEORGE STANLEY POTT, B.A., solicitor, to be a member of the Discipline Committee constituted under the Solicitors Acts, 1889 and 1919, in the place of Mr. L. B. Carslake, resigned.

Mr. GEORGE BERNARD LOMAS-WALKER, J.P., Alderman, of Messrs. BOOTH, WADE, LOMAS-WALKER & COLBECK, Solicitors, Leeds, has been appointed a Notary Public for the City of Leeds, and has also been appointed Legal Secretary to the Bishop of Ripon and Registrar of the Diocese of Ripon.

Mr. REGINALD ARMSTRONG, solicitor, Leeds, has been appointed The Law Society's representative on the Yorkshire Board of Legal Studies for a period of one year from the 1st July, 1931.

Mr. BERNARD BLASER, solicitor, has been appointed Clerk to the Chesham Urban District Council in succession to the late Mr. George Spittle Scott.

Mr. REGINALD W. BELL, LL.M., solicitor, Leamington, has been appointed Assistant Parliamentary Officer to the London County Council.

Professional Announcements.

(2s. per line.)

WILLIAM ARTHUR BRIGHT, surviving partner in the firm of ALFRED BRIGHT & SONS, of 15, George Street, Mansion House, E.C.4, has taken into partnership ARTHUR GUYON PRIDEAUX, B.A. (Oxon). The business will be continued under the same name and at the same address.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th July, 1931) 4½%. Next London Stock Exchange Settlement Thursday, 27th August, 1931.

	Middle Price 12 Aug. 1931.	Flat Interest Yield.	Approximate Yield with redemption
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	90	4 8 11	—
Consols 2½%	57	4 7 9	—
War Loan 5% 1929-47	101¾	4 18 3	—
War Loan 4½% 1925-45	100	4 10 0	4 10 0
Funding 4% Loan 1960-90	92	4 7 0	4 7 6
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	95	4 4 3	4 5 3
Conversion 5% Loan 1944-64	105	4 15 3	4 14 ‹
Conversion 4½% Loan 1940-44	100	4 10 0	4 10 0
Conversion 3½% Loan 1961	80	4 7 6	—
Local Loans 3% Stock 1912 or after	67	4 9 7	—
Bank Stock	255½	4 13 11	—
India 4½% 1950-55	75	6 0 0	6 11 0
India 3½%	55½	6 6 2	—
India 3%	47	6 7 8	—
Sudan 4½% 1939-73	99½	4 10 6	4 10 0
Sudan 4% 1974	93½	4 5 7	4 7 0
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	87½	3 8 7	3 17 0
Colonial Securities.			
Canada 3% 1938	91	3 5 11	4 10 0
Cape of Good Hope 4% 1916-36	97	4 2 6	4 14 0
Cape of Good Hope 3½% 1929-49	84	4 3 4	4 16 9
Ceylon 5% 1960-70	102	4 18 0	4 17 8
*Commonwealth of Australia 5% 1945-75	74½	6 14 3	6 17 6
Gold Coast 4½% 1956	100	4 10 0	4 10 0
Jamaica 4½% 1941-71	99	4 10 11	4 11 0
Natal 4% 1937	97	4 2 6	4 11 6
*New South Wales 4½% 1935-1945	58	7 15 2	8 10 0
*New South Wales 5% 1945-65	67	7 9 3	7 10 5
New Zealand 4½% 1945	91xd	4 18 11	5 9 0
New Zealand 5% 1946	99½	5 0 6	5 1 0
Nigeria 5% 1950-60	102	4 18 0	4 17 6
*Queensland 5% 1940-60	72	6 18 11	7 8 0
South Africa 5% 1945-75	103	4 17 1	4 16 0
*South Australia 5% 1945-75	75	6 13 4	6 15 6
*Tasmania 5% 1945-75	75½	6 12 5	6 15 0
*Victoria 5% 1945-75	70	7 2 10	7 6 0
*West Australia 5% 1945-75	75	6 13 4	6 15 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	65	4 12 4	—
Birmingham 5% 1946-56	104	4 16 2	4 14 6
Cardiff 5% 1945-65	103	4 17 1	4 16 6
Croydon 3% 1940-60	75	4 0 0	4 12 0
Hastings 5% 1947-67	103	4 17 1	4 16 6
Hull 3½% 1925-55	84	4 3 4	4 12 3
Liverpool 3½% Redeemable by agreement with holders or by purchase	77	4 10 11	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	55xd	4 10 11	—
London City 3% Consolidated Stock after 1920 at option of Corporation	66xd	4 10 11	—
Metropolitan Water Board 3% "A" 1963-2003	67¼	4 8 11	—
Do. do. 3% "B" 1934-2003	67½xd	4 8 11	—
Middlesex C.C. 3½% 1927-47	88	3 19 7	4 11 3
Newcastle 3½% Irredeemable	74	4 14 7	—
Nottingham 3% Irredeemable	66	4 10 11	—
Stockton 5% 1946-66	102	4 18 0	4 17 6
Wolverhampton 5% 1946-56	104	4 16 2	4 14 6
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	80½	4 19 5	—
Gt. Western Railway 5% Rent Charge	100	5 0 0	—
Gt. Western Rly. 5% Preference	77½xd	6 9 0	—
L. & N.E. Rly. 4% Debenture	71	5 12 8	—
L. & N.E. Rly. 4% 1st Guaranteed	61xd	6 11 2	—
L. & N.E. Rly. 4% 1st Preference	37xd	10 16 4	—
L. Mid. & Scot. Rly. 4% Debenture	71½	5 11 11	—
L. Mid. & Scot. Rly. 4% Guaranteed	62xd	6 9 1	—
L. Mid. & Scot. Rly. 4% Preference	39xd	10 5 5	—
Southern Railway 4% Debenture	75½	5 6 0	—
Southern Railway 5% Guaranteed	94½xd	5 5 10	—
Southern Railway 5% Preference	69½xd	7 3 11	—

*The prices of Australian stocks are nominal—dealings being now usually a matter of negotiation.

EX-LIEUT. R.N.R., age 49, seeks post any capacity, painting, carpentering, caretaker, watchman, etc. 1369

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PRACTICES AND PARTNERSHIPS.

COLONIAL Firm practising in East Africa would entertain applications for purchase of share in partnership.—Particulars in confidence, Box 807, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, 37, Oxford Graduate, C.O., of wide experience in conveyancing, company, trust and family business, seeks partnership yielding £1,000 to £2,000 per annum net in well-established firm in Liverpool.—Box 770, Solicitors' Journal, 29, Breams-buildings, E.C.4.

YOUNG Solicitor, admitted 1930, desires Junior Partnership in general practice after short preliminary clerkship. Experienced in conveyancing, probate and general country practice, including some advocacy. Capital available.—Box 737, Solicitors' Journal, 29 Breams-buildings, E.C.4.

SOLICITOR (31), formerly a member of the Bar, desires to purchase partnership in well-established firm in London or Southern Counties; thorough general experience in London and provinces; capital available.—Box 686, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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MRS. MAUD DRUMMOND, formerly of 6, Lincoln-street, Sloane-square, S.W.3, understood to have been a nurse at Hawick, N.B., during the war, or anyone knowing of her whereabouts, please write to J. C. and A. Steuart, W.S., 25, Rutland-street, Edinburgh.

IF NELLIE GRACE WILSON, last heard of nine years ago at 54, Park-street, East Greenwich, S.E.10, will COMMUNICATE with Messrs. Stephens & Son, Solicitors, 41, Railway-street, Chatham, Kent, she will hear of something to her advantage.

BOISRAGON, deceased.—COL. GUY HUDLESTON, V.C.—Will anyone having KNOWLEDGE of existence or whereabouts of a WILL or TESTAMENTARY DOCUMENTS or any other papers relating to this gentleman's affairs please COMMUNICATE immediately with Messrs. Finch, Jennings & Tree, 2, Gray's Inn-square, W.C.2.

MRS. ADA LATCHAM, deceased.—Will any Solicitor or other person having any KNOWLEDGE of any WILL made subsequent to the 28th January, 1904, by the above-named deceased, late of 3, Seavale-road, Clevedon, Somerset, who died on the 18th March, 1931, please communicate with Messrs. WEBBER & BULL, Solicitors, 34, Baldwin-street, Bristol.

THOMAS HODGSON, deceased, late Solicitor of Birmingham, died 31st March, 1891.—INFORMATION is desired as to the present addresses of two Grandchildren of the above, viz., MAGGIE HODGSON and HERBERT JOHNSON, by Messrs. Donaldson & Co., of 4 Bloomsbury Place, London, W.C.1, Solicitors on behalf of the Executor of Miss I. E. BARDSWELL, deceased.

COLLINS-CECIL, BEATRICE MARY.—The before-named Beatrice Mary, *nee* Gregg, of Sutton, Surrey, formerly the wife of Alfred John Toppin, who resided at Earls-avenue, Folkestone, and Goxhill, Lincs. and who is believed to have gone to Australia in or about 1920, is requested to COMMUNICATE with Edwin Boxall and Kempe, Solicitors, 63, Ship-street, Brighton, when she will hear something to her advantage.

MORRISON.—JAMES MORRISON, formerly of 61, Saint Paul's-street, New North-road, Middlesex, England, and late of Sydney, New South Wales, Australia, died on or since the 25th August, 1863, at some place unknown, leaving a paper writing purporting to be a WILL and to have been executed in three parts, whereby he appointed his wife MARGARET MORRISON (otherwise ALPORT), ALEXANDER MORRISON, of Austin Friars, London, England, ALEXANDER JOHN FRASER, of Pinners-court, London, EDWARD CRUCKNELL SANDY, and Mr. (A. J.) ALPORT, of Canterbury, New Zealand, Executors, and the said Margaret Morrison residuary legatee.—These persons or anyone having any information with regard to them or any part of the said paper writing should COMMUNICATE forthwith with the Treasury Solicitor (B.V.), Storey's-gate, London, S.W.1.

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ABSOLUTE REVERSION, life 86, to quarter of War Loan and Leaseholds. Solicitors: Messrs. Collins and Collins, 3, Coleman Street, E.C.2.

ABSOLUTE REVERSION, life 78, to half of £1,546 Cape of Good Hope 3 per cent. Stock. ABSOLUTE REVERSION, life 71, to one-twelfth of £1,532 New Zealand 3 per cent. Stock. ABSOLUTE REVERSION, life 64, to one-twelfth of £1,515 Natal 3 per cent. Stock. Solicitors: Messrs. Morrison, Hewitt & Harris, Reigate, Surrey; and 124, Chancery Lane, W.C.2.

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